

10:19:51 1 A. Can you repeat the question?  
 10:19:54 2 Q. For the fourth time, if you had a  
 3 substantive telephone conversation with someone at  
 4 Jefferson-Pilot about the Kearney claim, would you  
 5 take notes and preserve those notes by putting them  
 6 in the claim file?  
 10:20:09 7 Do you want to hear it again?  
 10:20:12 8 A. Well, I don't understand what you mean by  
 9 that.  
 10:20:14 10 Q. Okay. Which part don't you understand?  
 10:20:20 11 A. The substantive part of that.  
 10:20:22 12 Q. Well, you used the word substantive in your  
 13 earlier response, so I was using your word. Let's  
 14 break it down.  
 10:20:29 15 If -- you understand it's a hypothetical,  
 16 I'm not saying it ever happened, right?  
 10:20:35 17 A. Correct.  
 10:20:37 18 Q. If you had a call with someone at  
 19 Jefferson-Pilot about Mr. Kearney's claim, would you  
 20 take notes of the call and place those notes in the  
 21 claim file?  
 10:20:56 22 A. I wouldn't have kept necessarily any notes  
 23 on any phone call, and if there was anything of  
 24 importance, you know, I would record it.

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10:21:09 1 Q. Record it how?  
 10:21:13 2 A. Some type of communication, whether in a  
 3 letter, conversation with the people that I dealt  
 4 with at the company.  
 10:21:25 5 Q. You would record it in a conversation?  
 10:21:29 6 A. I'd pass along that information to people  
 7 that I worked with.  
 10:21:31 8 Q. You would tell other people at DMS about  
 9 the important information without putting the  
 10 important information in the claim file?  
 10:21:41 11 A. The best that I can recall, again being a  
 12 hypothetical situation, I'm not even trying to recall  
 13 if the circumstances you described ever happened, if  
 14 there was something that, you know, I needed to speak  
 15 with Todd or Bill, I would, and if it was something  
 16 of importance it would be placed in the file in some  
 17 fashion.  
 10:22:08 18 Q. Okay. So if you had a phone call with  
 19 someone at Jefferson-Pilot where there was an  
 20 important issue discussed, you wouldn't make notes of  
 21 that communication and put them in the claim file,  
 22 but you might pass along verbally that information to  
 23 either Todd Ditmar or Bill Hughes; do I now  
 24 understand correctly what you're saying?

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10:22:30 1 A. Can you say that again, please?  
 10:22:32 2 Q. Yes. If you had an important phone call  
 3 with someone at Jefferson-Pilot about Mr. Kearney's  
 4 claim, you would not take notes to memorialize that  
 5 call and put them in the claim file; you would  
 6 potentially, however, speak to Mr. Hughes or  
 7 potentially Mr. Ditmar about that important call?  
 10:22:49 8 MR. ELLIS: Objection. Misstates  
 9 the testimony.  
 10:22:52 10 Q. (By Mr. Roberts) Go ahead.  
 10:22:52 11 A. If I had a conversation with someone at  
 12 Jefferson-Pilot, I may have memorialized that  
 13 statement in the file, I may have passed along that  
 14 information to -- in a conversation with Todd or  
 15 Bill.  
 10:23:16 16 Q. Why is it not a good business practice to  
 17 document all important phone calls by memorializing  
 18 the call and preserving it by putting those notes in  
 19 the claim file?  
 10:23:29 20 MR. ELLIS: Objection.  
 10:23:30 21 A. Can you repeat the question?  
 10:23:31 22 MR. ROBERTS: Can you read it back  
 23 to him?  
 10:23:51 24 THE COURT REPORTER: "Question: Why

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1 is it not a good business practice to document  
 2 all important phone calls by memorializing  
 3 the call and preserving it by putting those  
 4 notes in the claim file?"  
 10:23:47 5 A. I wouldn't categorize that as a bad  
 6 business decision. There's a lot of phone calls that  
 7 happen on a lot of cases, a lot of phone calls that  
 8 happen during the day. If it's something that was  
 9 important, it would be memorialized or communicated  
 10 in the file in some way through letters or  
 11 conversation with the insurer.  
 10:24:14 12 Q. Are phone calls with your client,  
 13 Jefferson-Pilot, important?  
 10:24:28 14 A. They're important to have.  
 10:24:29 15 Q. Is it important to have conversations with  
 16 your investigators?  
 10:24:35 17 A. It's important to be able to speak with the  
 18 investigator and communicate information.  
 10:24:42 19 Q. Are the communications you have with IME  
 20 folks important?  
 10:24:46 21 A. It would be important if they had important  
 22 information about the file, yes.  
 10:24:51 23 Q. What's your practice of taking notes of  
 24 those important phone calls with clients,

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investigators, and persons performing IMEs?

A. Can you repeat the question.

Q. What's your practice of taking notes of those important phone calls with clients, investigators, and persons performing IMEs?

A. I don't have any particular practice. I may scribble down a note if I need to know a date and time of an examination that's scheduled, and as that information is written up and sent along to the insured, I wouldn't need that note. It's not something that I do every time or necessarily on every case.

Q. If there are no notes in the claim file of any communication you ever had with Jefferson-Pilot, does that mean you didn't have any communications with Jefferson-Pilot?

A. Can you repeat the question?

Q. If there are no notes in the claim file of any communication you had with Jefferson-Pilot, does that mean you had no such communication?

A. I think this claim file reflects that there had been communication with Jefferson-Pilot, if I had communication with them, and not necessarily everything is going to be written up as a note that I

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spoke with them.

Q. Can you testify under oath that you ever had any communication with anyone at Jefferson-Pilot about Mr. Kearney?

A. Can you repeat the question?

Q. Can you testify under oath that you ever had any communication with anyone at Jefferson-Pilot about Mr. Kearney?

A. I've had communication with Jefferson-Pilot over a number of their cases. I can't say specifically I spoke directly about his case.

Q. Did you ever discuss with Jefferson-Pilot the WJ576A policy?

A. Yes, I did.

Q. When was the last time you had a conversation with someone at Jefferson-Pilot about that policy?

A. Best of my recollection, that would have been a communication with their in-house counsel, I believe, last year just prior to these proceedings.

Q. These proceedings began in June of 2002, are you mindful of that?

A. I don't know when exactly it started.

Q. Well, it wasn't last year. So did you have

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your communication last year or was it in 2002?

A. I don't recall a specific time, if it was last year. It was just, I think, prior or after we had come across the incorrect amount of benefit. We conversed with their legal department to seek their guidance if this was what we believed it to be. So whenever that happened, I don't remember.

Q. Who did you speak to?

A. I remember speaking to an in-house counselor by the name of Stephanie Fairbough.

Q. And that was shortly after your Cuban coffee revelation?

A. I don't know the exact date and time that conversation happened, but I think it would be fair that it was around that time.

Q. Okay, was that a phone call?

A. I would imagine it was. I don't remember specifically. I don't believe I was down in that area at that time.

Q. Have you ever met with her personally?

A. I believe I have met with her once.

Q. When?

A. I don't remember the time.

Q. Before or after your Cuban coffee

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revelation?

A. My recollection is that it would have happened before.

Q. Okay. Before the Cuban coffee revelation you had a meeting with Ms. Fairbough. Was that about the WJ567A policy?

A. That's such a long time ago, I don't even recall if we even talked about claims. I don't know --

Q. What would have been the purpose of your meeting with her the one time you met with her?

A. I just remember being down there to visit their offices. I was introduced to a number of people. I can't say that I really had a one-on-one meeting, per se. It might have been a quick conversation. I just don't recall, it's a while ago.

Q. So that meeting had nothing to do with Mr. Kearney or the interpretation of the WJ576A policy, is that right?

A. To my knowledge, yeah, that would have been before.

Q. So --

THE WITNESS: Is it okay to take a break at this point?

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MR. ELLIS: Sure.

THE VIDEOGRAPHER: Going off record  
at 10:30 a.m.

(A recess was taken)

THE VIDEOGRAPHER: Back on record at  
10:37 a.m.

Q. (By Mr. Roberts) Mr. Mills, you're still  
under oath, you understand that?

A. Yes, I do.

Q. We were talking about a meeting that you  
once had with -- down in Greensboro with  
Jefferson-Pilot folks, and during the course of that  
meeting you were met or introduced to Stephanie  
Fairbough, a lawyer at JP, right?

A. Yes, I met her, and I wouldn't necessarily  
say it was a meeting. I was introduced to a number  
of people, one of which was her. I think we had a  
few words, but I don't think we talked anything in  
particular about cases.

Q. It had nothing to do with Mr. Kearney's  
claim or his policy, right?

A. Not to my knowledge, yes.

Q. And then you went down to Miami and you had  
this revelation with Mr. Hughes, right?

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Q. There's nothing you can recall from that  
moment in time through today of any communication or  
dialogue or any interaction you had with  
Jefferson-Pilot on that issue?

A. There was, to the best of my memory, a  
conversation with Jefferson-Pilot's counsel. I know  
that --

Q. The same conversation you've already told  
me about?

MR. ELLIS: Excuse me --

Q. (By Mr. Roberts) I want to know if it's  
the same conversation you've already talked about or  
something additional.

A. My recollection is that it would have been  
a subsequent conversation.

Q. Okay. Tell me about that conversation.

A. The best that I can recall is that it was a  
discussion of what steps that they wished to take at  
that juncture.

Q. Who was involved in the first phone  
conversation besides you and Stephanie?

A. My recollection is that Bill Hughes would  
have been involved in that call and Bill Dempsey.

Q. Bill Dempsey with Employers Reinsurance

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A. Down in Miami, yes, came to the realization  
that the benefits were being incorrectly paid.

Q. Okay. And did you speak to Jefferson-Pilot  
that day?

A. I don't recall.

Q. What was the next communication with  
Jefferson-Pilot that you can recall regarding Mr.  
Kearney or the WJ576A policy and/or its riders?

A. I remember a phone conversation at some  
point after our return trip apprising them of our --  
Jefferson-Pilot's counsel, of our findings and sought  
their guidance on the matter.

Q. And what was their guidance?

A. They agreed that there was an overpayment.

Q. What was their guidance?

A. Their guidance was that our findings were  
correct.

Q. Okay. So then what happened in your  
communications with Jefferson-Pilot?

A. Can you repeat the question, please?

Q. What then happened with the communications  
with Jefferson-Pilot?

A. You know, I don't recall specifically what  
happened at that juncture.

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Company?

A. Yes.

Q. Okay, who else?

A. That's all I can recall.

Q. Are you mindful of any notes that exist of  
this call taken by anyone?

A. Not to my knowledge.

Q. Were you here in Springfield on a  
conference call?

A. I believe that was the circumstances.

Q. Were you in Mr. Hughes's office with him?

A. I don't recall specifically where in our  
offices that conference call originated for us.

Q. Were you with him?

A. My recollection is that I was.

Q. Were either one of you taking notes during  
the call?

A. I don't recall taking any notes. I don't  
know if he did.

Q. Did either one of you prepare any documents  
in anticipation of the call or in preparation for the  
call?

A. Not to my knowledge. We conveyed our  
findings verbally over the phone.

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Q. Did you tell Ms. Fairbough or Mr. Dempsey why it is you wanted to have the conference call?

A. I don't recall if we specifically notified both of those individuals ahead of time of the purpose of the call, but that was obviously discussed during the conversation.

Q. Based on your memory of the call, did they have an understanding of what the call would be about, or did you convene this call and they were surprised about the nature of the content?

A. Can you repeat the question, please?

Q. Based on your memory of the call, was it a surprise to Ms. Fairbough or Mr. Dempsey about the nature or the issue to be discussed during the call?

A. I don't recall what their knowledge of the situation was going into the telephone call. I don't know how to characterize their response.

Q. How long after your return from Florida was this call?

A. I don't recall when that telephone call took place.

Q. Was it within days or weeks or months of the Florida trip?

A. That was quite some time ago. I don't know

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going forward, didn't it?

A. Yes, it did.

Q. Wouldn't it be appropriate within the policies and procedures at DMS to document some extraordinary fact that implicates a claim?

A. Well, if I recall correctly, that information was communicated to Mr. Kearney's counsel at that time as well as follow-up letters.

Q. So the only -- the only memorialization of the Cuban coffee revelation is that as stated in the October 22, 2001 letter to Mr. Spiegel from Mr. Hughes?

A. I would have to look back at the file. I know we sent a letter. I'm assuming that's what you're referring to.

Q. Right.

A. That was my recollection following that meeting that the letter summarizing the situation in the meeting was sent to his prior counsel, Spiegel.

Q. So I understand your testimony correctly, this extraordinary revelation is uncovered drinking Cuban coffee in Miami, Florida nearly ten years after the erroneous payments began, allegedly, and there does not exist any document anywhere that sets forth

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exactly when it would have taken place.

Q. Would it make sense and be logical that you would communicate that type of finding to Jefferson-Pilot relatively soon after its discovery?

A. Well, it would make sense to obviously communicate that to them in a timely fashion.

Q. And is that something that you generally do, communicate important information to clients in a timely fashion?

A. Well, we do as best we can to respond timely and promptly.

Q. Okay. Are you good at that?

A. I think I'm very good at that.

Q. Excellent. Is there a Cuban coffee revelation memo somewhere?

A. Can you phrase that question another way?

Q. Did you understand it?

A. No, I didn't.

Q. On your return trip from -- this is a relatively significant discovery at the Cuban cafe, wasn't it?

A. It was a discovery in a coffee shop that had some bearing on the case going forward.

Q. It had extraordinary bearing on the case

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your extraordinary revelation other than the letter that was sent to Mr. Spiegel?

A. Can you repeat the question, please?

Q. You and Mr. Hughes are having Cuban coffee in October 2001. You're reviewing or preparing for a meeting about a claim that's been existing for eight years, right? Mr. Kearney's claim was eight years old at that point?

A. 2001; yeah, it's probably about eight years.

Q. And the two of you, while sipping your coffee, come upon this extraordinary revelation that Mr. Roberson, who has 38 years of experience, didn't know about, Mr. Shelton, who has 38 years of experience, didn't know about, Mr. Maxwell, who has 20 years of experience, didn't know about, Ms. Harden, who has 31 years of experience, didn't know about, Jefferson-Pilot, who authored the policy and administered it for seven years, didn't know about, you, who worked on the policy for a year and eight or nine months, didn't know about, Mr. Ditmar, who you reported to for a year, didn't know about, and Mr. Hughes, who you reported to for another nine or ten months, didn't know about, this extraordinary

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1 revelation occurs and it's your testimony, sir, that  
2 there is not an internal document at DMS or a  
3 document DMS shared with Jefferson-Pilot or a  
4 document DMS shared with Employers Reinsurance which  
5 discusses this great revelation; the only document  
6 that exists is the letter that went to Spiegel after  
7 the meeting? Is that your testimony under oath?

10:51:52 8 A. I don't know if there is any other  
9 document. To my knowledge, there is the letter that  
10 was communicated to the insured. If there's other  
11 letters that were prepared, I know there was counsel  
12 involved and there were letters that were back and  
13 forth on that material through -- I believe it was  
14 prior counsel on this case, and Mr. Ellis. I'm sure  
15 there's stuff out there, I may have seen something,  
16 but I can't a hundred percent say that it said this,  
17 this, and that; it's been a while.

10:52:33 18 Q. You didn't tell Mr. Hughes that you would  
19 do a memo that discusses this Cuban coffee  
20 revelation, and he didn't ask you to prepare a memo  
21 discussing the Cuban coffee revelation, right?

10:52:47 22 A. My recollection is in that Cuban coffee  
23 revelation that you refer to, is that I discovered  
24 the error, you know, the error that JP had made and

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1 that I perpetuated over the time, and I made him  
2 aware of that.

10:53:08 3 I don't recall any point other than being  
4 embarrassed about it that he was critical of me or  
5 said, "Prepare a document." I just don't recall  
6 that.

10:53:22 7 Q. You don't recall him asking you to prepare  
8 a document detailing and summarizing this  
9 extraordinary revelation, and you didn't offer to do  
10 that; is that your testimony under oath?

10:53:40 11 A. To my recollection, I don't recall him  
12 asking me to do something. If it was prepared or  
13 not, I don't -- as I sit here today, a lot of time  
14 has passed, I don't remember what was prepared on  
15 that at that point in time.

10:53:54 16 MR. ROBERTS: We're going to change  
17 tapes. We'll be right back to this.

10:54:01 18 THE VIDEOGRAPHER: Going off record  
19 at 10:53 a.m.

(Off the record)

10:54:04 20 THE VIDEOGRAPHER: Back on record at  
21 10:57 a.m.

10:57:50 22 Q. (By Mr. Roberts) Mr. Mills, you're still  
23 under oath, you understand that?  
24

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10:58:05 1 A. Yes, I do.

10:58:08 2 Q. We're talking about whether or not you have  
3 any recollection of any memorandum being prepared  
4 that discusses in details the Cuban coffee  
5 revelation, and as I understand your testimony,  
6 you're not mindful sitting here today that any such  
7 memorandum existed?

10:58:32 8 A. I think what I've said is I remember there  
9 was a letter in the file following the meeting with  
10 Attorney Spiegel that I believe Mr. Hughes wrote to  
11 him outlining the situation I don't specifically  
12 recall any other type of memorandum, you know, as I  
13 sit here today.

10:59:10 14 Q. Is there any memorandum that you can recall  
15 sitting here today that's been prepared subsequent to  
16 the letter that went to Attorney Spiegel on this  
17 Cuban coffee revelation?

10:59:20 18 A. Can you repeat the question, please?

10:59:33 19 Q. Is there any such memorandum that you're  
20 mindful of that was prepared subsequent to the  
21 responsive letter to Attorney Spiegel in October of  
22 2001?

10:59:57 23 A. To my knowledge, a lot of this stuff has  
24 been handled between the lawyers. I don't

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1 specifically recall preparing anything myself.

11:00:13 2 Q. You don't have a memory of authoring  
3 anything in writing after that revelation, that  
4 extraordinary revelation at the Cuban coffee house?

11:00:31 5 A. I'm trying to, as I best remember -- to the  
6 best of my memory, I didn't do anything, but I  
7 just -- I don't remember. It's been a period of time  
8 now.

11:00:50 9 Q. Was there anybody on the DMS in-house legal  
10 team consulted about your Cuban coffee revelation?

11:01:16 11 A. Not to my knowledge.

11:01:16 12 Q. Was Adam Formus, the lawyer that's sitting  
13 in the room here, responsible for the Jefferson-Pilot  
14 block of business in October 2001, as far as you  
15 know, within the legal department at DMS?

11:01:33 16 A. You know, I really don't know what Adam's  
17 full responsibilities are, quite frankly. He's in  
18 the room, you can ask him.

11:01:43 19 Q. Okay. I probably will at some point under  
20 oath. Did you have any discussions with Adam about  
21 your extraordinary Cuban coffee revelation prior to  
22 June of 2002, which would be nine months after you  
23 came upon the revelation?

11:02:09 24 A. I don't recall having conversations with

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Adam Formus prior to that time.

Q. Do you have a recollection of any conversation you've had with Mr. Formus, or Attorney Formus, about the revelation?

A. I don't recall having any conversation with him pertaining to the revelation, as you phrase it.

Q. The revelation, as I phrase it, is the way that you came upon interpreting the contract at the Cuban coffee house?

MR. ELLIS: Objection.

A. That would be my understanding of what you mean by revelation.

Q. Okay, good. So sitting here today, you don't have any recollection of any communication you've ever had with Mr. Formus about your interpretation of the policy as you began to interpret it that morning?

A. Can you repeat the question, please?

Q. Sitting here today, you don't have a recollection of any conversation you've ever had with Attorney Formus about the interpretation of Mr. Kearney's policy which you came upon that day, October 2001, whenever it was?

A. I believe your prior questions were about

my knowledge of my conversations with Adam at that juncture of June of 2002, I believe you said. I have had conversations with Adam Formus subsequently about the revelation, as we understand it, about the application of the policy.

Q. When were those discussions?

A. I had at least recently the discussion with him on Wednesday when I met with him.

Q. Okay, take me the other way in chronologic order. When's the first one you can discuss, and I guess that one would be the most recent you can discuss.

A. I don't recall having any conversations with him about the revelation, really, until I met with him on Wednesday.

Q. Okay, so the only conversation you can recall having with Adam about the revelation is the one you had two days ago in Mr. Ellis' presence?

A. The only conversation I can recall having with Adam Formus on the revelation was on Wednesday, and the second part of that Mr. Ellis was present at that time.

Q. Prior to Wednesday had you had discussions about the revelation with any other in-house counsel

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at DMS?

A. Can you repeat the question, please?

Q. Prior to Wednesday, had you had discussions about the revelation with any other in-house counsel at DMS?

A. Yes.

Q. Who?

A. I spoke with Andrew Cohen.

Q. When was the first time you spoke with Andrew Cohen about the revelation?

A. The only time I remember speaking with him was about a week or so, a couple weeks ago.

Q. Other than the recent conversation with Mr. Formus, the recent conversation with Mr. Cohen, have you had any discussions with any other in-house counsel at DMS about the revelation?

A. Can you repeat the question, please.

Q. Other than Mr.'s Formus and Cohen, have you had any other discussions with any other in-house counsel at DMS about the revelation?

A. To the best of my knowledge, I don't recall prior conversations.

Q. With anyone?

A. With any other in-house DMS counsel.

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Q. On how many occasions have you spoken to counsel at Jefferson-Pilot about the revelation?

A. Can you repeat the question, please?

Q. On how many occasions have you spoken to counsel at Jefferson-Pilot about the revelation?

A. I don't recall the exact number of times. I think we've already talked a couple times already. I know I've been a part of a phone call during these proceedings at other times with our counsel.

Q. Your answer was "I think we've already talked about a couple times"; we haven't. We talked about one communication you had with Fairbough; it had nothing to do with Kearney or the policy when you went to Greensboro. And then we had a discussion earlier about a communication you had, a conference call, between Hughes, yourself, Fairbough, and Dempsey. Other than that conversation with Fairbough, have you had any other discussions about the Kearney policy with in-house counsel at Jefferson-Pilot?

A. I've been part of subsequent conversations that weren't initiated by me, conferenced in between Stephanie Fairbough, prior counsel on this case, Geri -- I forget her last name right now, so there's

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1 been that type of conversation.

2 Q. How many of those were there?

3 A. I don't know how many conversations I've  
4 had. I've been involved in a couple of those  
5 conversations, not all of them.

6 Q. Were those before the lawsuit was filed or  
7 after?

8 A. I don't recall when those conversations  
9 necessarily took place in the time frame of all this  
10 stuff that's gone on since then.

11 Q. Did you take any notes of those phone  
12 calls?

13 A. No, I did not.

14 Q. Did you author any memorandum before or  
15 after those phone calls relative to the issue of the  
16 phone call?

17 A. Can you repeat the question, please?

18 Q. Did you author any memorandum relative to  
19 those phone calls or the issues raised in those phone  
20 calls?

21 A. As I sit here now, I don't recall if I  
22 authored any memorandum, notes, in regards to those  
23 phone calls.

24 Q. Who participated in those phone calls other

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1 A. I really don't recall precisely all those  
2 conversations and the time frame of those calls  
3 happening along the lines of these proceedings. A  
4 lot of that stuff was just handled by the attorneys.  
5 I had a limited knowledge of what was going on at  
6 that point.

7 Q. Did these calls take place over several  
8 months or a couple days?

9 A. These calls didn't take place over a couple  
10 days. I don't know the period of time, the length of  
11 time that these calls took place.

12 Q. Greater than one month's time?

13 A. That seems to be a fair calculation.

14 Q. Are there any notes that exist anywhere  
15 including indications on a calendar you may keep of  
16 when these calls may have occurred?

17 A. I don't recall specifically writing that  
18 down. I could have put it down on my calendar that I  
19 have on my desk.

20 MR. ROBERTS: We'll request a copy  
21 of that, Counsel.

22 Q. (By Mr. Roberts) Go ahead, I'm sorry.

23 A. But I don't keep a type of running calendar  
24 on the computer system or anything like that.

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1 than you and Ms. Fairbough and Ms. Geraldine Johnson?

2 A. Johnson was the last name of the other  
3 attorney. I don't recall specifically, but I believe  
4 the other parties to that conversation would have  
5 been Bill Hughes and Bill Dempsey.

6 Q. You spoke in the singular, that  
7 conversation. Were there multiple conference calls  
8 with some or all of those players or was there just  
9 one that you can recall?

10 A. I remember multiple conversations with  
11 those individuals. I don't know exactly the exact  
12 number of conferences that would have been involved  
13 with those individuals.

14 Q. Do you recall from the substance of those  
15 conversations whether the persons were speaking in  
16 the context of a lawsuit having already been filed,  
17 or in anticipation of potential legal action, or  
18 both?

19 A. Can you repeat the question, please?

20 Q. Can you recall, based upon the context of  
21 those calls, whether people were speaking in terms of  
22 a lawsuit having already been filed, or whether there  
23 was discussions about the issue and the potential for  
24 future litigation?

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1 Q. During the course of those discussions was  
2 it ever discussed that it would be wise to strip Mr.  
3 Kearney of his ability to allege bad faith by  
4 continuing to pay him allegedly erroneously?

5 MR. ELLIS: I will object to the  
6 question and direct the witness not to answer  
7 anything specific about the subject of those  
8 conversations. They are both privileged as  
9 attorney/client and as work product.

10 MR. ROBERTS: They're not privileged  
11 nor are they work product.

12 MR. ELLIS: You will follow my  
13 advice and not respond to any question  
14 concerning the substance of those  
15 conversations.

16 MR. ROBERTS: Boone vs. Van Liner  
17 cannot be more unambiguous on this point.

18 Q. (By Mr. Roberts) I understand your counsel  
19 is directing you not to answer, so we'll simply have  
20 to get the documents that have not been produced and  
21 reconvene this deposition and continue it in  
22 progress.

23 Are you aware of anybody  
24 taking any notes of these calls or anybody authoring

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any documents to memorialize these calls?

A. Again, not to my knowledge. I don't recall any individuals authoring documents. Obviously, in speaking with them, they would probably know better than I.

Q. Did you ever send or receive any e-mails relative to these discussions and the issue of the Cuban coffee revelation?

A. I don't recall sending any e-mails specifically pertaining to the Cuban coffee revelation finding.

Q. What do you mean specifically pertaining to?

A. Addressing that question or issue exclusively.

Q. Do you recall ever sending or receiving an e-mail to or from anyone that discusses the way the policy began to be interpreted after the Cuban coffee meeting with you and Hughes?

A. I recall communicating via e-mail with our -- with the prior counsel on this case, Geri Johnson.

Q. Okay. Anyone else?

A. I just recall e-mails that went to

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A. I don't remember that specifically. Since we've talked about him being involved in this process, my guess is that he had been cc'd on a lot of those, but I don't know, you'd have to speak with him about it.

Q. Do you delete e-mails you receive?

A. Do I delete e-mails that I receive? Yes, I do.

Q. What's the process you undertake to delete your e-mails?

A. Can we take a break right now?

MR. ELLIS: After you answer the question.

A. Can you repeat the question, please?

Q. What's the process you undertake to delete your e-mails?

A. The process that I undertake to delete my e-mails is, depending on what the e-mail is, I delete it that day. All the ones I delete, you know, at some point in time, I don't have any specific guidelines where if I have an e-mail for a week, a month, a year, that I necessarily delete it. A lot of times my in basket is filled up enough that the technological folks will ask you to clean a number of

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Ms. Johnson. There might have been other people that were cc'd on that, but I don't recall who those individuals were.

Q. Did she send you e-mails?

A. I believe she did. She did send me e-mails.

Q. Did Ms. Fairbough send you e-mails or copy you on e-mails relating to the issue?

A. I do recall being copied in on e-mails from Ms. Fairbough.

Q. Did Bill Dempsey send to you, or copy you; or did you send to him, or copy to him, e-mails on the issue?

A. Can you repeat the question, please?

Q. Did you send to Mr. Dempsey, receive from Mr. Dempsey, copy from Mr. Dempsey, or did you copy to Mr. Dempsey any e-mails relating to this issue we're discussing?

A. Again, as I sit here today, I don't remember specifically whether or not I was the author of an e-mail where I had communicated directly to him or cc'd him on that e-mail.

Q. Do you recall receiving from him an e-mail or being copied on an e-mail he sent?

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documents out.

Q. Do you have Microsoft?

MR. ELLIS: He did ask for a break, he answered your question. Go ahead.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: Going off record at 11:21 a.m.

(A recess was taken)

THE VIDEOGRAPHER: Going back on record at 11:30 a.m.

Q. (By Mr. Roberts) Mr. Mills, you're still under oath. You understand?

A. Yes.

Q. Have we exhausted your knowledge, sitting here today, of all the phone conversations, e-mail communications, and written documents that you're aware of sitting here today that exist commenting on, referring to, or relating to the Cuban coffee revelation?

A. I would have to say yes, as a lot of that stuff was handled by the attorneys and really taken out of my hands at that point.

Q. Do you use Microsoft Outlook?

A. Yes, I believe that's what we use.

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1 Q. And when you get an e-mail that you want to  
2 save, do you put it in a file folder or do you just  
3 leave it in your in box?

4 A. I usually leave it in my in box.

5 Q. Do you have any file folders for your  
6 e-mails?

7 A. I think I've probably saved two or three  
8 e-mails, that I recall. I don't keep a specific  
9 folder to maintain any e-mail; I just don't delete  
10 it.

11 Q. If you get an e-mail and you want to delete  
12 it immediately or you don't see any reason to keep  
13 it, you just push "delete," and is that all you do to  
14 get rid of the e-mail, or is there something else you  
15 do?

16 A. I would delete the e-mail if I didn't need  
17 it. I think there's like a wastebasket that it goes  
18 into. I think that's where, after a period of time,  
19 there's a number of them, they ask you to delete a  
20 number of them. We've gotten a lot of viruses so  
21 we've had to delete a number of e-mails to get rid of  
22 that.

23 Q. Okay, so, if you go back to your office  
24 today, you'll have some e-mails and you might decide

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1 to push the "delete" button on them, and you'll do  
2 that, right, you'll push "delete" on an e-mail?

3 A. Yeah, I guess that's the process.

4 Q. And then your understanding is it goes to  
5 the trash bin?

6 A. I don't know the specific terminology. I'm  
7 not a Microsoft technician. It's a wastebasket,  
8 deleted items. I don't know where it goes.

9 Q. Do you ever go into the wastebasket of the  
10 deleted items or the trash bin and perform an  
11 additional function to delete the e-mail?

12 A. Yes, I would do that.

13 Q. How frequently do you do that?

14 A. I think it varies. If I'm given, from our  
15 technological folks because it's overloaded and I  
16 need to delete some, I'll do that. If we have  
17 viruses that come in and we delete those, I delete  
18 them again and make sure it's not going to affect our  
19 system. Periodically I delete the e-mails that are  
20 received and sent because of the waste basket filled  
21 up. I don't do it every day, I don't do it every  
22 month, but periodically.

23 Q. You don't do it every month. You do it  
24 every quarter?

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1 A. To be honest with you, Mr. Roberts, I don't  
2 really have any specific time frame. I might do it  
3 once a month, semi-annually, I can't remember.

4 Q. You've been advised, though, that the  
5 wastebasket will get to some capacity and you have to  
6 go in there and delete things to create more  
7 capacity?

8 A. I recall receiving communications that  
9 there's a large volume of e-mails that are deleted in  
10 the wastebasket and we need to ...

11 Q. Are those communications from in-house  
12 counsel or from the IT team at DMS?

13 A. My recollection, those would be from our  
14 technological unit.

15 Q. Have you ever received any instruction or  
16 counsel from the general counsel's office at DMS to  
17 delete e-mails on a periodic basis?

18 A. No, I've not received any such  
19 communication.

20 Q. Do you use Word?

21 A. Yes, I use Microsoft Word.

22 Q. And Excel?

23 A. I do use Excel periodically.

24 Q. If you create a word document or Excel

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1 document on a particular claim, do you always print  
2 up the document and put it in the claim file?

3 A. Can you repeat the question, please?

4 Q. If you create a word document or an Excel  
5 spread sheet on a particular claim, do you always  
6 print up the document and then put it in the claim  
7 file?

8 A. I wouldn't necessarily always put whatever  
9 was on the Word document or Excel, print it and put  
10 it in the file. I imagine a good portion of those  
11 letters do go into the file.

12 Q. Whether they go into the file or not, do  
13 you maintain them somewhere on the network or on your  
14 hard drive?

15 A. I save letters on our hard drive or network  
16 drive.

17 Q. All letters?

18 A. No, I don't save all my letters.

19 Q. You don't save all of your claimant-related  
20 letters to the network or hard drive?

21 A. No, I don't.

22 Q. Would the same be true about the Excel  
23 spread sheets that you might prepare, some of them  
24 might get into the claim file, some might not, some

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1 might get to the network or the hard drive and some  
2 might not?

3 A. I don't really recall using any type of  
4 Excel spread sheet that often.

5 Q. Have you used Excel with regard to claims?

6 A. Yes, I have.

7 Q. And do you always print up the product and  
8 put it in the claim file?

9 A. No, I wouldn't necessarily do that for  
10 every situation.

11 Q. Do you always save them to the hard drive  
12 or network?

13 A. No, I would not.

14 Q. Do you have e-mail communications with Bill  
15 Hughes?

16 A. Yes, I do.

17 Q. Do you save those e-mails if they're about  
18 a particular claim or do you print up the e-mails and  
19 put them in the claim file?

20 A. Well, what do you mean by save? Like to  
21 the hard drive again?

22 Q. Or network.

23 A. I don't save e-mails. I read them, I might  
24 not delete it right away from my in basket, but I

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1 extraordinary Cuban coffee revelation within the past  
2 week?

3 A. No, I don't recall seeing anything along  
4 that line.

5 Q. Have you seen any notes or summaries of any  
6 conference calls or phone conversations in which  
7 you've been involved regarding the extraordinary  
8 Cuban coffee revelation?

9 A. Can you repeat that please?

10 THE COURT REPORTER: "Have you seen  
11 any notes or summaries of any conference calls  
12 or phone conversations in which you've been  
13 involved regarding the extraordinary Cuban  
14 coffee revelation?"

15 A. The only thing I would have seen is what's  
16 been in the claim file. I haven't seen anything  
17 outside of that, that I can remember.

18 Q. Were there any other claims other than Mr.  
19 Kearney's impacted by your Cuban coffee revelation?

20 MR. ELLIS: I'm going to object to  
21 the constant reference to the -- or at least  
22 somebody define the Cuban coffee revelation so  
23 we know what we're talking about.

24 MR. ROBERTS: We did that earlier

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1 don't save it to the hard drive or company drive.

2 Q. Do you print each and every e-mail you get  
3 about a particular claim and preserve that e-mail by  
4 then putting it in the claim file?

5 A. No, I don't print each and every e-mail  
6 that I would get about a particular file and save it.

7 Q. In the claim file?

8 A. In the claim file.

9 Q. Within the past week have you reviewed any  
10 memorandum authored by anyone regarding the  
11 extraordinary Cuban coffee revelation?

12 MR. ELLIS: Objection to form.

13 A. Can you repeat the question, please?

14 Q. Within the past week have you reviewed any  
15 memorandum authored by anyone regarding the  
16 extraordinary Cuban coffee revelation?

17 A. I don't recall specifically seeing any  
18 memorandum other than what was communicated in the  
19 claims file.

20 Q. Other than documents that exist in the  
21 claim file, your memory is --

22 A. I've looked at the claims file.

23 Q. Did you see anything that isn't in the  
24 claim file that is a memorandum regarding the

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1 with your witness on the stand, but I'm  
2 working on what he understood it to be as  
3 expressed earlier under oath.

4 Q. (By Mr. Roberts) Mr. Mills?

5 A. Can you repeat the question, please?

6 Q. Have there been any other claims of any  
7 other policyholders impacted by your Cuban coffee  
8 revelation?

9 A. I don't have any knowledge of that.

10 Q. No other Jefferson-Pilot claims on which  
11 you were working were impacted by that, is that  
12 correct?

13 A. I don't recall any other claims that I've  
14 personally handled that the similar circumstances  
15 arose and I can't speak for the other cases because I  
16 don't know.

17 Q. I'm not talking about any similar  
18 circumstances, I'm just talking about did your  
19 revelation impact the payment of benefits to anyone  
20 other than Mr. Kearney, as far as you know?

21 A. As far as I know, to my knowledge, it  
22 hasn't impacted anybody else.

23 Q. Has not, did you say?

24 A. Yeah, to my knowledge.

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1 Q. Were you given a spot bonus after the Cuban  
2 coffee revelation?

3 A. I think my testimony earlier was that I  
4 don't recall ever receiving a spot bonus.

5 Q. Have you told me everything you can recall  
6 about communications you had with Jefferson-Pilot  
7 persons regarding Mr. Kearney's claim?

8 A. To the best of my knowledge as I sit here  
9 today, I've answered your questions accurately and as  
10 much as I can recall.

11 Q. Okay. I just want to confirm. There's  
12 nothing you can remember sitting here today about  
13 anything you communicated with a Jefferson-Pilot  
14 person regarding Mr. Kearney's claim?

15 MR. ELLIS: Objection. Asked and  
16 answered several times.

17 MR. ROBERTS: Okay.

18 A. Other than what we've already discussed?

19 Q. That's my question. Have we discussed  
20 everything that you can think of?

21 A. To my knowledge, yes, we have.

22 Q. Did you and Mr. Hughes jointly arrive at  
23 the settlement proposal that you communicated to  
24 Mr. Spiegel at the meeting in Miami?

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1 extraordinary Cuban coffee revelation interpretation  
2 of the policy?

3 MR. ELLIS: Objection to form.

4 A. Can you repeat the question again, please?

5 Q. You said that numbers were discussed with  
6 Mr. Spiegel. Were those numbers without regard for  
7 the Cuban coffee revelation?

8 A. My recollection was that numbers that were  
9 discussed with Attorney John Spiegel were based on or  
10 without the prior understanding of the change of what  
11 the benefit would be at that point in time.

12 Q. I don't understand what you said. What  
13 were you trying to say?

14 A. That the numbers that were discussed were  
15 based on the previous understanding of what Mr.  
16 Kearney's benefit was prior to the discovery in the  
17 coffee shop.

18 Q. Okay, so the numbers that you and  
19 Mr. Hughes, or maybe just Mr. Hughes, were suggesting  
20 to Mr. Spiegel as the measurement of how this claim  
21 could be resolved, those numbers were presented  
22 without any consideration given to the new  
23 interpretation of the policy?

24 MR. ELLIS: Objection to form.

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1 MR. ELLIS: I'm going to object. I  
2 think that assumes facts not in evidence.

3 A. My recollection is that Mr. Hughes had a  
4 conversation with Mr. Spiegel about considering or  
5 discussing a settlement. I don't think it was  
6 necessarily an offer.

7 Q. There was no settlement offer proposed at  
8 that meeting, as far as you're aware?

9 A. To my recollection, numbers were discussed  
10 and discussions were held at how numbers were  
11 arrived. The circumstances or the revelation that we  
12 talked about that happened in the coffee house added  
13 another element of that discussion, but I don't think  
14 an actual number was extended to Attorney Spiegel at  
15 that point in time. Mr. Hughes would have more  
16 knowledge on that than I would.

17 Q. Well, you were there, weren't you?

18 A. Yeah.

19 Q. Mr. Hughes didn't have any private  
20 discussions with Mr. Spiegel during that day that you  
21 weren't participating in or present at, right?

22 A. Correct.

23 Q. And you said there was -- you said numbers  
24 were discussed. Those were without regard for the

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1 A. Can you repeat the question so I can  
2 understand it.

3 Q. Do you not understand it?

4 A. No, I did not.

5 Q. Was the number -- was Mr. Hughes the only  
6 one that communicated a number to Spiegel as opposed  
7 to you?

8 A. Yeah, he was the superior, so he  
9 communicated.

10 Q. Do you know how it was that Mr. Hughes  
11 arrived at determining the appropriateness of  
12 articulating whatever number he articulated?

13 A. I don't recall a precise analysis that he  
14 used to arrive at that number. The best of my  
15 recollection is that number would have to take into  
16 account a potential liability moving forward,  
17 interest rates, present value, mortality, morbidity,  
18 and my understanding is that those things were  
19 considered when he arrived at that number.

20 Q. So mortality, morbidity, discount rate,  
21 those were factors in the equation, in Mr. Hughes's  
22 equation that got him to a number that he  
23 articulated, is that right?

24 A. I can't speak specifically for him, because

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1 I don't know all the discussions that he would have  
2 had necessarily about discussing numbers with  
3 Spiegel. But my understanding is that those types of  
4 factors would have been discussed or considered in  
5 coming to any type of settlement offer, number,  
6 proposal or discussion.

11:51:52 7 Q. Okay. And, as far as you know, Mr. Hughes  
8 did not incorporate in the equation this  
9 extraordinary revelation which had, in your words, an  
10 extraordinary impact on the benefits going forward?

11:52:09 11 A. My recollection, and what I talked about  
12 earlier, was that he apologized to Attorney Spiegel  
13 at the onset of that meeting and that the numbers  
14 that he had in mind prepared to discuss with him were  
15 prior to the discovery of the reduction in the  
16 benefits in the coffee house just minutes before.

11:52:41 17 Q. Okay. So Mr. Hughes was willing to present  
18 a number to Mr. Spiegel that did not incorporate or  
19 measure this extraordinary revelation, is that right?

11:52:56 20 A. Can you say that question again, please?

11:52:57 21 Q. So, as far as you know, Mr. Hughes  
22 presented a number to Mr. Spiegel that did not factor  
23 in the extraordinary revelation that you and he had  
24 reached earlier that day?

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1 Mr. Hughes on which you're giving testimony that you  
2 have an understanding about how he arrived at the  
3 number?

11:52:46 4 A. Can you repeat the question, please?

11:53:02 5 MR. ROBERTS: Can you read that  
6 back.

11:53:02 7 THE COURT REPORTER: "What  
8 discussions did you have with Mr. Hughes on  
9 which you're giving testimony that you have an  
10 understanding about how he arrived at the  
11 number?"

11:53:02 12 A. My recollection is that the discussions  
13 that Mr. Hughes had with Attorney Spiegel included  
14 the things I talked about earlier, the mortality,  
15 morbidity, interest rates, benefit level, maximum  
16 benefit period, present value. I don't think there  
17 was an exact formula that you could punch in the  
18 numbers and come up with something.

11:53:11 19 Q. That wasn't my question. Are you  
20 testifying that you had no discussions whatsoever  
21 with Mr. Hughes about the manner in which he arrived  
22 at a number, and your testimony is based solely on  
23 what you observed in the dialogue between Hughes and  
24 Spiegel?

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MR. ELLIS: Objection.

11:53:11 1  
11:53:15 2 A. To the best of my recollection, they had  
3 discussion on numbers and that it didn't -- the  
4 numbers that they ultimately discussed did not take  
5 into account that the benefit had been incorrectly  
6 paid to date.

11:53:33 7 Q. You mean you weren't seeking a  
8 reimbursement or you didn't factor in for future  
9 benefits that item?

11:53:44 10 A. My recollection is that the discussions  
11 were based on the benefit level, the incorrect  
12 benefit level, and that the appropriate benefit level  
13 that it should have been at that time.

11:53:56 14 Q. I didn't understand your answer to the  
15 question. Did you factor in the assertion that Mr.  
16 Kearney was required to reimburse the company for any  
17 benefits paid erroneously?

11:54:15 18 A. I can't recall if that was part of the  
19 consideration at that point in time. I know at some  
20 point in time a decision was made not to seek  
21 reimbursement. I don't know at that particular time  
22 whether or not that was something that was considered  
23 in the discussion of numbers that were had.

11:54:37 24 Q. What discussions did you have with

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11:55:51 1 A. I recall having discussions with Mr. Hughes  
2 about numbers and what would make -- calculating what  
3 a settlement number would look like.

11:56:06 4 Q. Is this prior to the meeting you had with  
5 Spiegel?

11:56:19 6 A. My recollection is that I did have a  
7 conversation with him prior or at some point after, I  
8 don't know a specific time line.

11:56:32 9 Q. Tell me what you can recall from that  
10 discussion.

11:56:56 11 A. I can't recall a specific conversation of  
12 what was said other than some of the factors that you  
13 would consider in coming up with an idea of a  
14 settlement is what the present value, mortality,  
15 things that I talked about earlier. I just don't  
16 remember the exact content and specifics of the  
17 conversation.

11:57:16 18 Q. Do you have a memory that he unambiguously  
19 communicated to you that the number had nothing to do  
20 with the Cuban coffee revelation?

11:57:30 21 A. My understanding is that those numbers that  
22 were initially discussed were based on the benefit  
23 level that was being paid at that point in time,  
24 which was, I believe, why Mr. Hughes had apologized

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at the onset of the meeting because those numbers weren't the numbers that we would be able to use going forward because the benefit needed to be reduced.

Q. That wasn't my question. My question was do you have a specific memory of the discussion with Mr. Hughes where he communicated to you that the number he intended to propose to Spiegel or had already proposed to Spiegel had not incorporated the Cuban coffee revelation?

A. To the best of my recollection, we had a conversation about numbers. The best I can recall the numbers that were discussed were in relation to what his -- Mr. Kearney's present benefit level was at.

Q. So it had nothing to do with the revelation?

A. That's my recollection, yes.

Q. And your recollection is based on Mr. Hughes telling you that?

A. I don't recall him necessarily telling me that or the conversations we may have had about that. I do remember him expressing that at the onset of the meeting with Attorney Spiegel.

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A. I wouldn't call it a coincidence. You know, Attorney Spiegel had asked us for a couple copies of the policy. It made me take a look at that policy and come to the understanding. My recollection was that he was aware of the circumstances with the case, that there were differences on both parties and that we were going to discuss those, and that one of the options when there's disputes is to come to some type of resolution and that those discussions would be had.

Q. You're mindful that DMS had a copy of the WJ567A policy for over four years prior to that meeting, right?

A. I don't recall a specific time that an actual copy of that policy was received by DMS.

Q. You're mindful that DMS performed some work for Jefferson-Pilot relative to the Kearney claim going back to 1997; you're mindful of that from your knowledge of the claim file, right?

A. I recall looking at that claim file there was a handling of the case by DMS prior to 2000.

Q. And you're mindful that in 1997 that at Todd Ditman's specific request, because he wanted the legal department to review the policy, that the

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Q. So it's just coincidence that you and your supervisor planned a trip to Florida, bought tickets, got on a plane and went to meet with Mr. Kearney's counsel, and prior to actually arriving on ground in Miami, Florida you had no discussion, no inkling or no conclusion that he had been paid erroneously up until the time that you got on a plane to Florida.

A. That was a long --

Q. That was a bad question. Let me ask you that again.

Prior to getting on the plane to Florida and committing to that trip, did you have any discussion with anyone or had you thought to yourself that the benefits paid to Mr. Kearney were being paid in error?

A. I had no knowledge that the benefits being paid to Mr. Kearney were in error until sitting down in that coffee shop 15, 20 minutes or so before we met with Attorney Spiegel.

Q. So it's just a coincidence that two people would fly from Springfield, Massachusetts to Miami, Florida to talk to a lawyer for a claimant, and it's just coincidental that an extraordinary matter came to your attention after you arrived in Florida?

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WJ567A policy was sent to him by Howard Shelton, right?

MR. ELLIS: Objection.

A. I don't recall that specific communication document. If it's -- I'm sure it's in the file. If you want me to look at it, I'll verify that for you.

Q. As far as you're aware, did Jefferson-Pilot ever provide DMS with any documents or information that describe the benefits and the policies Jefferson-Pilot had outstanding with policyholders?

A. Can you repeat that question, please?

Q. As far as you're aware, did Jefferson-Pilot ever provide DMS with any documents or information that describe the benefits and the policies Jefferson-Pilot had outstanding with policyholders?

A. To my knowledge, recollection, they provided us with copies of their policies. I don't recall any other materials that they gave us.

Q. Copies of the policies were given independent of the actual claim files or were they just incorporated amongst the various claim files?

A. I don't remember the logistics, if they came in with each individual file or if they were sent all the policy forms and riders all at one time,

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1 I don't remember that.

2 Q. Were all the different policies and riders  
3 consolidated into some file or binder or desk  
4 somewhere at DMS for access by different folks?

5 A. My recollection is that we did have a  
6 binder of copies of these policies that we could  
7 attain.

8 Q. So would each of the claim reps responsible  
9 for that block of business have in their cubicle or  
10 office a three-ring binder that contained the  
11 Jefferson-Pilot policies and riders?

12 A. I don't recall if they had an actual binder  
13 themselves on their desk or they had an area where  
14 they could go to research that.

15 Q. So there was a communal area where there  
16 was some kind of binder or folder with the various  
17 policies in it, Jefferson-Pilot policies?

18 A. Again, my recollection was that the  
19 examiners either had all those series on their desk  
20 in a binder form or a place where they could go to so  
21 they could retrieve the information they needed.

22 Q. When DMS takes on a new block of business,  
23 is it the procedure that the legal department will  
24 review the policies that are now subject to

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1 administration?

2 A. Can you repeat that, please?

3 Q. When DMS takes on a new block of business,  
4 is it the procedure that the in-house counsel staff  
5 will perform a review of the new policies that will  
6 be subject to administration by DMS employees?

7 A. I'm unaware of any such procedure.

8 MR. ROBERTS: Let's switch tapes.

9 THE VIDEOGRAPHER: Going off record  
10 at 12:06 p.m.

11 Back on record at 12:07 p.m.

12 Q. (By Mr. Roberts) So if I understand your  
13 testimony accurately, when -- you understand you're  
14 still under oath?

15 A. Yes, I do.

16 Q. When DMS took on the Jefferson-Pilot block  
17 of business, you're not aware of any education,  
18 training or insight into the policies that was  
19 provided to you or your peers by anyone at  
20 Jefferson-Pilot?

21 A. No, I am not.

22 Q. And you're not mindful of any education,  
23 training, or insight into the particulars of the  
24 policies that was provided to you and your peers by

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1 DMS in-house counsel?

2 A. No, I'm not aware of any such program or  
3 occurrence.

4 Q. It doesn't necessarily need to be a  
5 program. It doesn't have to be formal; it could have  
6 been informal.

7 A. I have no prior knowledge of these  
8 policies.

9 Q. I'm not talking about prior knowledge. Was  
10 there an occasion, formal or informal, where DMS  
11 in-house counsel gave you and your peers, or you,  
12 some overview of what these policies are about?

13 A. No, I don't recall any type of  
14 communication like that.

15 Q. Did Todd Ditmar provide you and/or your  
16 peers with any counsel, insight, or overview of the  
17 Jefferson-Pilot policies?

18 A. I don't recall him providing any particular  
19 oversight review of the policies.

20 Q. So as I understand it, you and -- was it  
21 three other claim examiners on the Jefferson-Pilot  
22 block of business in 2000?

23 A. I believe I testified that I recall three  
24 others, I don't exactly remember.

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1 Q. So do I understand correctly that the four  
2 of you, without any dialogue or communication with  
3 people at Jefferson-Pilot, without any dialogue or  
4 communication with DMS in-house counsel, and without  
5 any dialogue or communication with Todd Ditmar, the  
6 four of you were left to administer these policies  
7 and understand for yourselves what the policies  
8 provided?

9 A. Well, at that time my recollection is we  
10 were given a number of cases to administer, and yeah,  
11 I don't remember anybody specifically giving any  
12 specific guidance to anything about the cases or the  
13 policies.

14 Q. Were you folks given binders of the  
15 policies or were those things that you and/or your  
16 peers created on your own?

17 A. I don't recall if there were original  
18 policy forms received from JP or they were copies  
19 provided to us that we copied over for several other  
20 copies for multiple folks. I don't know the  
21 logistics of how all that worked out.

22 Q. Did you maintain a binder at your cubicle,  
23 a binder of the Jefferson-Pilot policies in 2000?

24 A. You know, I really don't recall.

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1 Q. But you do know that others did?  
 2 A. Again, I don't know if others had it or  
 3 not.  
 4 Q. I thought you just testified that some  
 5 people had binders, others just used a communal area.  
 6 A. I think my testimony was more I don't know  
 7 if they necessarily had it at their desk or if it was  
 8 in a communal area or not.  
 9 Q. Oh, you don't know if it was in a communal  
 10 area now?  
 11 A. I don't know if they had it at their desk  
 12 or if they referred to it at a communal area or not.  
 13 Q. Is it one or the other or is it potentially  
 14 neither?  
 15 A. My recollection is it was probably one or  
 16 the other.  
 17 Q. Okay. And you can't recall whether you had  
 18 a binder?  
 19 A. To be honest with you, Mr. Roberts, I don't  
 20 remember. It's a long time ago.  
 21 Q. What did you -- did you have a cubicle back  
 22 then in 2000?  
 23 A. Yes, I did have a cubicle.  
 24 Q. And now do you have an office with a door?

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1 A. Now I do have an office with a door.  
 2 Q. What did you maintain in your cubicle?  
 3 A. In my cubicle I had my computer, I had a  
 4 storage area for claim files, I had calendars, pens,  
 5 pads, photos of my family. Other various items I  
 6 can't recall.  
 7 Q. All personal items? Any business  
 8 materials?  
 9 A. Business materials? I don't recall  
 10 specifically what I would have had at my desk at that  
 11 point in time.  
 12 Q. And you can't testify one way or the other  
 13 under oath about whether you had a binder of the  
 14 policies of Jefferson-Pilot or not?  
 15 A. Yeah, I really don't remember at that time.  
 16 Q. In your office do you have a binder of the  
 17 Equitable policies?  
 18 A. Yes, I do have that.  
 19 Q. Is that a good business practice?  
 20 A. I think it's a good business practice to  
 21 have copies of those policies, whether they're in  
 22 your office or, you know, a ten second walk to  
 23 another area where you can reference them.  
 24 Q. Do you find it convenient to have them in a

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1 binder in your office now?  
 2 A. I don't find it convenient to have them. I  
 3 don't find it any more convenient if they're in my  
 4 office or if they're a short walk outside my office.  
 5 Q. So if you didn't have these policies back  
 6 in 2000 in a binder in your cubicle, they would have  
 7 been just a short walk away from you, is that what  
 8 you're saying?  
 9 A. That would be my recollection, yes, I had  
 10 access to them.  
 11 Q. Where was Todd Ditmar's office in relation  
 12 to yours in 2000?  
 13 A. He was fairly close. We're on the same  
 14 floor.  
 15 Q. Do you know if he maintained a binder in  
 16 his office of the Jefferson-Pilot policies?  
 17 A. I really don't have any idea.  
 18 Q. Was Mr. Hughes responsible for the  
 19 Jefferson-Pilot block of business at all at any time  
 20 that you're aware of?  
 21 A. I don't know all of Mr. Hughes's  
 22 responsibilities. I know I obviously talked to him  
 23 on Jefferson-Pilot cases, so I think he did have some  
 24 formal responsibility.

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1 Q. As I understand your testimony, he wasn't  
 2 your direct supervisor in 2000, but he became your  
 3 direct supervisor after you became Director of Claims  
 4 for the Equitable block, is that right?  
 5 A. Can you say that again, please?  
 6 Q. As I understand your prior testimony, he  
 7 didn't become your supervisor until you became  
 8 Director of Claims for the Equitable block?  
 9 A. Yes.  
 10 Q. Are you mindful whether he had prior  
 11 responsibility prior to that time for the JP block?  
 12 A. I don't fully remember what the full scope  
 13 of his responsibilities were at that point in time.  
 14 Q. On how many occasions have you given a  
 15 deposition?  
 16 A. I believe there's four or five other  
 17 situations.  
 18 Q. Have you ever reviewed any videotape to  
 19 prepare you for what to expect in a deposition?  
 20 A. Yes, I believe I have.  
 21 Q. Is that something that DMS maintains  
 22 in-house or did someone outside of DMS offer that to  
 23 you?  
 24 A. I believe that was someone outside of DMS.

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